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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 2568

READY TRUCK LINES, INC., A CORPORATION,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

STATEMENT OF JURISDICTION.

Ready Truck Lines, Inc., plaintiff, by its attorneys, presents with its petition for the allowance of an appeal to the Supreme Court of the United States from the final decree entered herein on May 2, 1941, the following statement of jurisdiction pursuant to Rule 12 of said Supreme Court.

1. Plaintiff's application for a permit to operate in interstate commerce as a contract carrier by motor vehicle, based upon operations conducted July 1, 1935, and continuously since, which application was filed with the Interstate Commerce Commission under Section 209(a) of Part II of the Interstate Commerce Act, formerly known as the Motor Carrier Act of 1935, (U. S. Code, Supp. I, Title 49, Section 309(a)), was denied by order of that Commission.

2. This case was filed by plaintiff to enjoin the Commission's order, under Section 205(g) of Part II of the

Interstate Commerce Act (U. S. Code, Supp. I, Title 49, Section 305 (g)), which provides that any final order of the Interstate Commerce Commission made under Part II of that Act shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part I. The District Court dismissed the case for want of equity.

3. Sections 41 (28) and 43 to 47, inclusive, of the United States Code give to the District Courts of the United States jurisdiction of cases brought to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission.

4. Section 210 of the Judicial Code (U. S. Code, Title 28, Chapter 2, Section 47a) provides that the final decree of the District Court in such cases may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken within sixty days after entry of final decree.

5. No question of the validity of any statute or treaty is involved.

6. This is not an appeal from an interlocutory decree.

7. The date of entry of the final decree of the District Court sought to be reviewed is May 2, 1941, and the date of presentation of plaintiff's application for appeal is May 7, 1941.

8. No opinions were delivered by or in the District Court upon the rendering of the decree sought to be reviewed, or earlier in the same case, or in companion cases.

READY TRUCK LINES, INC.,
Plaintiff-Appellant,
By GERALD T. WILEY,
J. AUSTIN LATIMER,
Its Attorneys.

HALFPENNY, HAHN, WILEY and SAKELSON,
Of Counsel.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 2568

READY TRUCK LINES, INC., A CORPORATION,
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants-Appellees.

AMENDED STATEMENT OF JURISDICTION.

Ready Truck Lines, Inc., plaintiff, by its attorney, presents with its petition for the allowance of an appeal to the Supreme Court of the United States from the final decree entered herein on May 2, 1941, the following amended statement of jurisdiction pursuant to Rule 12 of said Supreme Court.

A. Nature of Case and Rulings Below.

Plaintiff's application for a permit to operate in interstate commerce as a contract carrier by motor vehicle, based upon operations conducted July 1, 1935, and continuously since, which application was filed with the Inter-

state Commerce Commission under Section 209(a) of Part II of the Interstate Commerce Act, formerly known as the Motor Carrier Act of 1935 (U. S. Code, Supp. I, Title 49, Section 309(a)), was denied by order of that Commission.

This case was filed by plaintiff to enjoin the Commission's order, under Section 205(g) of Part II of the Interstate Commerce Act (U. S. Code, Supp. I, Title 49, Section 305(g)), which provides that any final order of the Interstate Commerce Commission made under Part II of that Act shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part I.

Plaintiff complained that the Commission had failed to grant a fair hearing, failed to grant a full hearing, that its findings were not based upon substantial evidence, that its order was erroneous in law, that plaintiff was entitled to a permit, and that by reason of the Commission's denial order the plaintiff would be required to cease the extensive operations conducted prior to, on and since July 1, 1935, and would suffer great irreparable damage.

A certified copy of the transcript of proceedings of the Commission was received in evidence by the statutory three-judge court. The case was dismissed for want of equity.

The questions presented by this appeal are substantial, involving (a) fundamental rights to a full and fair hearing, (b) duties and powers of the Commission with respect to the issuance of contract carrier permits under the so-called "grandfather" clause of Section 209 of the Motor Carrier Act, 1935, and with respect to hearings held to determine whether persons are entitled to such permits, and (c) questions whether there was any evidence to support the Commission's findings and order in this case.

B. Statutory Provisions.

The following statutory provisions, giving the District Courts of the United States jurisdiction of cases brought to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission, and providing that the final decree of the District Court in any such cases may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken within sixty days after entry of final decree, are believed to sustain the jurisdiction:

U. S. C., Title 28, Sec. 47a (Act of March 3, 1911, c. 231, Section 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Section 207, 36 Stat. 1148; October 22, 1913, c. 32 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Section 35, 31 Stat. 158; March 3, 1909, c. 269, Section 1, 35 Stat. 838; March 3, 1911, c. 231, Sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Section 2, 38 Stat. 804; February 13, 1925, c. 229, Section 1, 43 Stat. 938).

C. Cases Sustaining the Supreme Court's Jurisdiction on Appeal.

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499.

United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454.

Florida v. *United States*, 282 U. S. 194.

Beaumont, Sour Lake & Western Ry. Co. v. *United States*, 282 U. S. 74.

Ann Arbor Railroad Co. v. *United States*, 281 U. S. 658.

Louisville & Nashville R. R. Co. v. *United States*, 238 U. S. 1.

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541.

United States v. *Maher*, 307 U. S. 148.

D. Date of Decree and Date of Presentation of Application for Appeal.

The date of entry of the final decree of the District Court sought to be reviewed is May 2, 1941, and the date of presentation of plaintiff's application for appeal is May 7, 1941.

E. Decree of Opinion of the District Court.

No opinions were delivered by or in the District Court upon the rendering of the decree sought to be reviewed, or earlier in the same case, or in companion cases.

Appended to this statement is a copy of the final decree sought to be reviewed and a copy of the findings of fact and conclusions of law of the District Court.

F. Miscellaneous.

This is not an appeal from an interlocutory decree.

No question of the validity of any statute or treaty is involved.

Respectfully submitted,

GERALD T. WILEY,
J. AUSTIN LATIMER,
111 West Washington Street,
Chicago, Illinois,
Attorney for Ready Truck Lines, Inc.,
Plaintiff-Appellant.

Dated June 3rd, 1941.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 2568.

READY TRUCK LINES, INC., a Corporation, Plaintiff,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Final Decree.

This cause having come on for final hearing before the special court of three judges, constituted as required by the Act of October 22, 1913 (c. 32, 38 Stat. 219 U. S. C. Title 28, Sec. 47) and the Motor Carrier Act of 1935, Sec. 205 (h) (c. 498, 49 Stat. 543, U. S. C. Suppl. 1, Title 49, Sec. 305 (h)), and the Court having made and filed its findings of fact and conclusions of law, and upon consideration of the evidence and arguments of counsel orally and on brief, having concluded, found and determined that the petition for a temporary and permanent injunction should be dismissed for want of equity.

It is Ordered, Adjudged and Decreed that the petition for a temporary and permanent injunction be and the same is hereby dismissed for want of equity.

This 2nd day of May, 1941.

OTTO KERNER,
United States Circuit Judge;
PHILIP L. SULLIVAN,
United States District Judge;
M. L. IGOE,
United States District Judge.

EXHIBIT "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 2568.

READY TRUCK LINES, INC., a Corporation, Plaintiff,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Requested Findings of Fact and Conclusions of Law by Defendants, United States of America and Interstate Commerce Commission.

In the above-entitled cause, the court makes the following Findings of Fact:

1. The plaintiff, a corporation, brings this suit to suspend, set aside and annul the Interstate Commerce Commission's orders of September 30, 1940, and December 20, 1940, entered in a proceeding entitled Ready Truck Lines, Inc., Contract Carrier Application, MC 28005.

2. On February 12, 1936, plaintiff's predecessor filed an application with the Interstate Commerce Commission (hereinafter referred to as "Commission") under Section 209 (a) of the Interstate Commerce Act seeking a "grandfather" permit as a contract carrier by motor vehicle of packing house products, fertilizer, canned goods, groceries, and roofing materials, in interstate or foreign commerce, between points in Illinois, Indiana, Ohio, and Kentucky over irregular routes.

3. Hearing was had on this application at Chicago, Ill., on October 17, 1938, at which numerous motor carriers and rail carriers operating in the territory in which rights were sought opposed the granting of the application.

4. Prior to the issuance of a final report and order by the Commission petition was filed by certain protestants asking

that the proceeding be reopened. The basis for this request was that certain evidence developed at a hearing before the Commission in application of Budreck Truck Lines, MC 39073, indicated that plaintiff had misrepresented the facts as to his inability to produce documentary proof of operations prior to September, 1935, because his records had been destroyed by fire, and further that all of the claimed operations were not those of the plaintiff, but of another carrier who had a valid "grandfather" application then pending.

5. On November 21, 1939, the Commission reopened the proceedings and further hearing was held thereon at Chicago on February 19, 1940. Further hearing was also had on June 3, 1940, of which plaintiff had due notice.

6. At the hearing on June 3, 1940, plaintiff advised the sitting examiner that he had documentary proof of his operations subsequent to September, 1935, but that he would not offer such evidence in the case, being content to rest upon the record as then constituted notwithstanding that the sitting examiner stated that he would entertain a motion to continue the hearing in order to afford plaintiff an opportunity to introduce such evidence.

7. On September 30, 1940, the Commission issued its report and order denying plaintiff's application, said report being officially reported in 26 M. C. C. 213.

8. On November 4, 1940, plaintiff filed a petition asking for the postponement of the effective date of the order of September 30, 1940, and for rehearing. The grounds advanced for rehearing were that plaintiff had procured documentary evidence in support of his claims of operations on July 1, 1935, and continuously thereafter. On December 20, 1940, the Commission by order denied this petition.

9. The findings of the Commission as set out in said report of September 30, 1940, upon which its order of the same date denying plaintiff's application was based, are as follows:

"Williams was granted a permit by the Public Service Commission of Indiana on November 19, 1937, and by the

Public Utilities Commission of Ohio on January 10, 1938. On or about July 1, 1935, most of the shipments alleged to have been transported by him were transported by other carriers and by so-called owner-operators. The testimony is conflicting as to whether the shipments were transported at that time on the shipping documents of Williams or on those of the carriers who actually performed the transportation service. It is estimated by Williams that on July 1, 1935, approximately 70 per cent of the shipments tendered to him were transported on equipment other than his own. Late in 1935 and early in 1936, most of the shipments tendered to Williams were transported by either the B. & R. Trucking Company, of Argos, or Selab, Inc., under permits granted to these lines by the States of Indiana and Ohio. After Williams severed relations with these lines, he operated his own equipment into Indiana either without State authority, or under State permits granted to B. & R. Trucking Company and other motor lines without their knowledge or consent. From this time until November 19, 1937, when Williams was authorized to operate in interstate commerce in Indiana, he was fined on numerous occasions for failure to carry insurance and to comply with other requirements of that state."

"The lease arrangement consisted of nothing more than a verbal understanding between Williams and the owner-operators that the latter would perform service for Williams on a per-trip basis, for which compensation would be from 65 to 80 per cent of the revenue."

"A witness associated with Ready Foods Company since August 1935, except for the period from February to April 1936, when he was employed by Williams testified that shipments tendered to Williams from August 1935 to March 1936 moved over lines of B. & R. Trucking Company of Argos, Ind., and certain other motor lines. During this time cargo insurance was carried by these carriers and not by Williams on such shipments."

"Whereas here, it has been established that the applicant claiming 'grandfather' rights made extensive use of the facilities and services of other carriers whose vehicles were not under its domination and control, there should be a

clear showing by the applicant as to what, if any, interstate operations were carried on by the use of its own vehicles. No such showing has been made in this proceeding. It is not at all certain how many, if any, vehicles were owned and operated by Williams on or prior to July 1, 1935."

"In addition to the necessity for showing the exact character and scope of the operations conducted by Williams on July 1, 1935, the burden is on applicant to establish the truth of all allegations in regard to the continuance thereof by competent and substantial evidence. No such showing has been made. No documentary evidence was submitted to show bona fide operations on July 1, 1935, and continuously since that time, and the oral evidence in regard thereto is vague and somewhat contradictory. The evidence is insufficient to establish that Williams owned or operated any vehicles in his own name on July 1, 1935. The exact date on which he began operation in his own name is not clear from the record. We are not convinced that any interstate operations were performed by Williams prior to November 1935, when he was employed by other carriers."

"We find that applicant has failed to establish that its predecessor in interest was on July 1, 1935, and that such predecessor and applicant continuously since then have been, in bona fide operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of any commodities between the points set forth in the application; and that the application should be denied."

The court thereupon announces the following Conclusions of Law:

1. The plaintiff was accorded a full and fair hearing before the Commission.

2. The Commission did not err in entering its order of December 20, 1940, denying plaintiff's petition for rehearing.

3. The findings set forth in the report of the Commission of September 30, 1940, considered as a whole, are sufficient to sustain and justify the order of the Commission of Sep-

tember 30, 1940, and the testimony and exhibits received by the Commission, as set out in the certified transcript filed in this cause contain substantial evidence to support the findings of the Commission in its said report and its order made pursuant thereto.

4. The action of the Commission upon plaintiff's application, as set out in its report and order, was a valid exercise of its legal powers, and was warranted by the facts shown in the Commission's record.

5. The plaintiff's bill will be dismissed for want of equity.

OTTO KERNER,
United States Circuit Judge.
PHILIP L. SULLIVAN,
United States District Judge.
M. L. IGOE,
United States District Judge.